

Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER KENNEDY**
(Mailed 5/10/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California
Water Service Company (U 60 W), a Corporation,
for an Order Authorizing It to Increase Rates
Charged for Water Service at Its Bear Gulch
District.

Application 01-09-062
(Filed September 21, 2001)

And Related Matters.

Application 01-09-063
Application 01-09-064
Application 01-09-065
Application 01-09-066
Application 01-09-067
Application 01-09-068
Application 01-09-069
Application 01-09-070
Application 01-09-072
Application 01-09-073
Application 01-09-074

**OPINION ADOPTING EFFECTIVE DATE
SURCHARGE METHODOLOGY**

Summary

In this decision, we adopt a methodology for calculating the effective date surcharge for California Water Services Company (Cal Water).

Background

On February 2, 2003, Cal Water filed a motion stating that the Commission's decision in this proceeding had been delayed beyond that

contemplated by the Rate Case Plan.¹ Cal Water contended that the delay had caused it financial harm, and requested that the Commission either grant Cal Water an interim rate increase or set an early effective date for the anticipated increase.² In support of its request, Cal Water cited to Apple Valley Ranchos Water Company (Apple Valley), Decision (D.) 02-03-046. (See Cal Water Motion at pages 4 and 6.) Cal Water did not propose a methodology for calculating the surcharge to collect the lost revenues should the Commission grant the request for an effective date. In D.03-04-033, the Commission denied Cal Water's request for an interim rate increase but granted Cal Water's request for an effective date. Cal Water filed no subsequent motions proposing a methodology for calculating the surcharge.

On August 21, 2003, the Commission approved Apple Valley's rate increase and included a specific surcharge in the tariffs to recover the lost revenues. (See Appendix B of D.03-08-069.) Approximately two weeks later, the Commission issued D.03-09-021 where it authorized Cal Water to implement substantial rate increases and, like Apple Valley, to collect the amounts contemplated by D.03-04-033 via a surcharge. The Commission also specified that Cal Water should use the same methodology to calculate the surcharge as used by Apple Valley.

In its application for rehearing of D.03-09-021, Cal Water objected to using the Apple Valley Methodology to calculate its effective date surcharge. Cal

¹ Re Schedule for Processing Rate Case Applications by Water Utilities, 37 CPUC2d 175 (D.90-08-045).

² By setting an effective date prior to the final determination, the Commission ensures the utility that procedural delays will have no effect on company revenues. Here, the Cal Water increase approved on September 5, 2003, was effective to April 3, 2003.

Water contended that it had developed an alternate methodology more consistent with the intent of D.03-04-033 and the season pattern of water usage in its service districts. This alternate methodology, which uses actual water sales to calculate lost revenues, would result in \$358,547.91 in additional revenue being collected from ratepayers. Cal Water argued that failure to use its methodology would “deprive Cal Water of the revenues to which the Commission has already determined Cal Water is entitled . . .”

Cal Water stated that the Apple Valley decision was issued after the close of the record in this proceeding, and that it had no opportunity to comment on whether the Apple Valley Methodology should be applied to Cal Water. In D.04-01-052, we agreed with Cal Water and granted limited rehearing to consider whether the Apple Valley Methodology should be applied to Cal Water. That decision set briefing dates for the issue.

On February 20, 2004, Cal Water filed its brief on the alternate surcharge methodology, and argued that the Apple Valley Methodology should not be applied to Cal Water because it “would constitute an unconstitutional taking under applicable law” and that the Apple Valley Methodology is “not suited” for Cal Water.³ Cal Water also stated that it had filed tariff sheets implementing a surcharge based on the Apple Valley Methodology, as directed by the Commission’s Water Division.

The question presented is the product of two decisions, D.03-04-033 and D.03-09-021. The first decision adopted an effective date for the second decision.

³ In its brief, Cal Water refers to D.03-04-033 as granting “interim rate relief.” (See, e.g., page 2.) That decision, however, did not grant Cal Water’s request for interim rate increase but only established an effective date for the final decision.

The methodology for calculating the surcharge necessary to implement these two decisions is the issue at hand.

Overview of the Methodologies

The Commission sets rates by using forecasts of annual revenue requirements and annual water consumption. Once these rates are adopted, the utility's revenues depend on its actual sales, not on the forecasts.

In its brief, Cal Water states that its "methodology entails using the company's actual water sales data during the relevant period from April to September of 2003 for the districts at issue." Cal Water then sets out a tabulation of recorded water sales and compares them to the sales Cal Water says are implied by the Apple Valley Methodology – which uses forecast sales. Finally, Cal Water tabulates the revenue it claims to have lost due to using the Apple Valley Methodology.

For our purposes today, we need not go beyond Cal Water's request to calculate the surcharge based on actual sales. This is sufficient information to enable us to evaluate Cal Water's proposed methodology.

In essence, we accept Cal Water's Methodology because our purpose in adopting D. 03-04-033 was to replicate the revenue stream that would have arisen had D.03-09-021 been adopted on the effective date. For that reason, calculating "lost" revenue based on actual sales, as advocated by Cal Water, is perfectly consistent with our intention. The Apple Valley Methodology uses forecast data, and is thus inconsistent with our policy intention.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule

77.7 of the Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. Cal Water proposed using actual sales to determine the revenue to be recovered through the surcharge.
2. A methodology that uses actual sales offers the best way of calculating the revenues lost through the delay in adopting rates in this proceeding.

Conclusions of Law

1. The methodology proposed by Cal Water to implement the “effective date” policy of D.03-04-033 is reasonable.
2. Today’s order should be made effective immediately.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The request of California Water Service Company to change the calculation of its surcharge is granted.
2. Application (A.) 01-09-062, A.01-09-063, A.01-09-064, A.01-09-065, A.01-09-066, A.01-09-067, A.01-09-068, A.01-09-069, A.01-09-070, A.01-09-072, A.01-09-073, and A.01-09-074, are closed.

This order is effective today.

Dated _____, at San Francisco, California.